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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/954,464	09/14/2001	Kenneth F. Gay	GAY 2-009-3	8908

7590 04/04/2005  
Gerald L. Smith  
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EXAMINER

LEV, BRUCE ALLEN

ART UNIT PAPER NUMBER

3634

DATE MAILED: 04/04/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	<b>Application No.</b> 09/954,464	<b>Applicant(s)</b> GAY ET AL.	
	<b>Examiner</b> Bruce A. Lev	<b>Art Unit</b> 3634	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
  - If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
  - If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
  - Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 07 May 2004.  
 2a) ☐ This action is FINAL. 2b) ☒ This action is non-final.  
 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-9, 11-23, 25-30, 32-36 and 42-50 is/are pending in the application.  
 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.  
 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.  
 6) ☒ Claim(s) 42-47 is/are rejected.  
 7) ☒ Claim(s) 1-9, 11-23, 25-30, 32-36 and 48-50 is/are objected to.  
 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.  
 10) ☒ The drawing(s) filed on 14 September 2001 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.  
 Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
 Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).  
 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
 a) ☐ All b) ☐ Some \* c) ☐ None of:  
 1. ☐ Certified copies of the priority documents have been received.  
 2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.  
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- 1) ☒ Notice of References Cited (PTO-892)  
 2) ☐ Notice of Draftperson's Patent Drawing Review (PTO-948)  
 3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
 Paper No(s)/Mail Date \_\_\_\_\_.

- 4) ☐ Interview Summary (PTO-413)  
 Paper No(s)/Mail Date \_\_\_\_\_  
 5) ☐ Notice of Informal Patent Application (PTO-152)  
 6) ☐ Other: \_\_\_\_\_

**BRUCE A. LEV**  
**PRIMARY EXAMINER**

## DETAILED ACTION

### ***Claim Rejections - 35 USC § 112***

***Claims 1-9, 11-23, 25-30, 32-36, and 42-50 are rejected*** under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

As concerns claims 1, 13, 27, 42, 48, 49, and 50, it is unclear as to whether the "shelf assembly" is being claimed or the shelf assembly in combination with the "bay width". The preamble states "shelf assembly for connection with vertical supports spaced apart a bay width", however, the "bay width" is positively set forth in these claims, i.e., "extending substantially co-extensive with said bay width" (claim 1, lines 3-4); "extending substantially along said bay width" (claim 1, line 8). "Adapted to be" language could help to overcome this rejection, i.e., "*adapted to be* connected with vertical supports spaced apart a bay width".

### ***Claim Rejections - 35 USC § 102***

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

***Claims 42-47 are rejected*** under 35 U.S.C. 102(b) as being anticipated by ***Baumgart 2,845,729***.

***Baumgart sets forth*** a shelf assembly comprising a base region; a forward wall formed of (at least) two spaced rods and notches; bracket assemblies connectable with vertical rods for supporting the base region at predetermined angles; couplers; and a sign engaging surface.

***Allowable Subject Matter***

***Claims 1-9, 11-23, 25-30, 32-36, and 48-50 would be allowable*** if rewritten or amended to ***overcome*** the rejection(s) under 35 U.S.C. ***112***, second paragraph, set forth in this Office action.

***Conclusion***

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Bruce A. Lev whose telephone number is (571) 272-6831. The examiner can normally be reached on Mon-Fri., 5:30 AM - 2:00 PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Lanna Mai can be reached on (571) 272-6867.

The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system.

Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available

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through Private PAIR only. For more information about the PAIR system, see <http://pairedirect.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

March 28, 2005

A handwritten signature in black ink, appearing to read 'B. Lev', with a large, stylized 'B' and 'L'.

**Bruce A. Lev**

**Primary Examiner**

**Group 3600**